U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 29 2013 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (TSC), denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician/biomedical researcher. The petitioner is currently a clinical research specialist at the [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on December 19, 2011. In an accompanying letter, counsel offered a capsule discussion of *NYSDOT* and listed a number of unpublished AAO appellate decisions approving national interest waivers. Counsel did not provide any of the facts from the cited decisions except to identify the occupations of the respective beneficiaries. Counsel failed to explain how these unpublished decisions are relevant to the present proceeding. While the USCIS regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The decisions show that workers in a wide range of fields can qualify for the waiver, but they do not

establish blanket waivers for aliens in those fields. At issue is not what the petitioner does, but the significance of what the petitioner has so far accomplished.

The petitioner submitted a copy of a 2011 article from the [redacted] showing the petitioner as the fourth of seven authors. The petitioner claimed no other published work, although she documented a number of conference presentations. The petitioner also documented the status of numerous projects approved or pending with the [redacted] Review Board (a body overseeing research involving human subjects). The petitioner's initial submission establishes her participation in medical research, but it does not establish her impact or influence on her field, or otherwise distinguish the petitioner's work from that of other researchers in that field.

On May 29, 2012, the director issued a request for evidence, instructing the petitioner to submit documentation to meet the guidelines set forth in *NYSDOT*. All of the evidence submitted in response to the notice was testimonial rather than documentary. The petitioner submitted statements from herself, counsel, and six witnesses. (Counsel's statement listed seven witnesses, but there is no letter from the seventh named witness, identified as [redacted] manager of [redacted] Washington, DC.") Counsel asserted that the petitioner's "experience and abilities set her apart from other highly qualified professionals in her field," but counsel provided no details except in the form of quotations from witness letters. Therefore, a lengthy discussion of counsel's statement would be redundant.

The petitioner stated: "Currently, I am a Research Specialist – Clinical at the [redacted] I am involved in various projects on liver diseases including hepatitis C, working to improve treatment outcomes and addressing health disparities especially among minority populations particularly African Americans." The petitioner cited statistics relating to hepatitis C, and other statistics regarding "the educational achievement gap between blacks and whites at the college graduate level in the United States." The petitioner stated her intention to "continue to work collaboratively with seasoned researchers in the field to achieve ground breaking findings that will improve care and treatment outcomes." The petitioner did not, however, identify any specific "ground breaking findings" that she has made in the past, nor did she provide much information about her ongoing research except to state that it involved hepatitis C.

The six witness letters contain praise for the petitioner's research, but several of the letters offer no useful information about the nature of that research. [redacted] medical advisor at [redacted] Rockville, Maryland, stated that he is "very familiar with [the petitioner's] work" but did not elaborate. [redacted] stated:

> [The petitioner] has made extremely important contributions to hepatitis C research through her involvement in numerous very crucial research projects. . . . Her contributions include innovative ideas and vital coordination of the various aspects of the studies to ensure successful execution of these projects. She ensures quality data from these projects with the goal of improving treatment outcomes and reducing healthcare disparities.

The vague reference to "coordination" seems to imply that the petitioner's role is more akin to logistical support than to direct participation in research. letter lacks sufficient detail to permit a definitive conclusion.

associate professor at the has collaborated with the petitioner on several research projects. described one such project:

> From results of various ongoing studies, ribavirin is still the mainstay of treatment of hepatitis C and truly understanding how the drug exerts its effects . . . is of upmost [*sic*] importance. This is the goal of one of the studies [the petitioner] is involved with. . . . [The petitioner's] work has also involved addressing disparities in allocation of liver for transplantation in minorities and vulnerable populations especially women. [The petitioner] has exhibited outstanding skills, dedication and consistently high level of competence since I have known her and have been collaborating on various projects.

In the above passage, described the goal of a given project, but not the petitioner's role in that project. praised the petitioner as "an excellent researcher" but provided no information about the petitioner's actual research work.

In a similar vein, clinician manager for , praised the petitioner's "innovative ideas" but provided no examples of those ideas, no explanation of their importance and no evidence of their impact.

Two witnesses from the both of whom interacted with the petitioner during her earlier training at the provided some idea of the actual nature of the petitioner's work (rather than the overall goals of projects in which she participates). health scientist administrator at was previously while the petitioner trained at stated that the petitioner "ensur[ed] compliance with applicable Federal research regulations through adequate informed consent and confidentiality of their clinical data and biospecimen samples."

now coordinator of the at stated that the petitioner "is responsible for the recruitment and screening of study participants. In addition, she coordinates and monitors [the] enrollment process, develop[s] standard operating procedures for study protocols and obtain[s] informed consent."

is the principal researcher on many of the petitioner's research projects. letter is consistent with other letters that describe the petitioner's role in terms of administrative and logistical support: "Her responsibilities include managing IRB and

General Clinical Research Center applications, preparing adverse event and annual reports, and other regulatory requirements, subject recruitment and retention, specimen collection and shipping, data collection and data management."

The director denied the petition on September 18, 2012, stating that the petitioner submitted "no corroborative primary evidence" to show "the direct role the beneficiary has played in the field as a whole." The director found: "The evidence does not indicate that the beneficiary's work have [*sic*] garnered national or international attention, for example by being widely cited by independent researchers."

On appeal, counsel states: "Beneficiary believes that is [*sic*] the TSC is applying the test for EB-1, Extraordinary Ability alien, and not the standard mandate [*sic*] by Congress." Under section 203(b)(1)(A)(i) of the Act, the standard for extraordinary ability is "sustained national or international acclaim." The director did not require the petitioner to establish sustained national or international acclaim, or to submit the evidence of extraordinary ability required in the USCIS regulations at 8 C.F.R. § 204.5(h)(3). Rather, the director found that the petitioner's work had not earned widespread "attention" (which is not the same as "acclaim"). The record does not show that the petitioner's work has attracted any notice outside of Baltimore.

Counsel acknowledges the director's finding that the petitioner had not shown that her work was "widely cited by independent researchers," and contends that "this decision was reached in error." The petitioner has submitted no evidence of citation, and therefore a finding to that effect cannot be in error. The petitioner had apparently published only one article before the petition's filing date, and even the most complimentary witness letters did not state that the petitioner's published work had influenced the field.

In claiming that the director failed to apply "the standard mandate[d] by Congress" for the national interest waiver, counsel does not identify that standard. The statute itself does not define the national interest or offer any evidentiary threshold. The most significant guidance found in the statute is that aliens of exceptional ability are typically subject to the job offer requirement. Therefore, elementary logic dictates that the petitioner cannot qualify for the waiver simply by establishing exceptional ability. The regulation at 8 C.F.R. § 204.5(m)(2) defines "exceptional ability" as a degree of expertise significantly above that ordinarily encountered" in a given field.

Counsel asserts that the petitioner has submitted the evidence required to meet her burden of proof, and that the director "did not give proper weight to [the petitioner's] corroborative evidence." Some of that evidence showed that the petitioner participates in research, but was so general that it did little except establish the nature of the petitioner's occupation.

The only materials that attempted to evaluate the petitioner's work were witness letters, already discussed above. Counsel repeatedly asserts that the petitioner submitted "seven (7) letters" in support of the petition, but only six letters appear in the record. Counsel had previously identified a seventh witness (whose title had no evident connection with the petitioner's field), but the record

does not contain that letter and counsel has never quoted from it or otherwise established its existence.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* Letters from experts are not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Many of the letters considered above contained bare assertions of the importance of the petitioner's work, without specifying what, exactly, is important about the petitioner's work. Those letters that offered any information about the petitioner's role portrayed that role as largely organizational and logistical. None of the letters showed that the petitioner has had a particularly substantial impact on her field as a whole (which is the standard articulated in *NYSDOT*); they have indicated only that the petitioner played an integral role in particular projects at and, later, at

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.